

HOUSE BILL No. 4397

February 27, 1997, Introduced by Reps. Jellema, Byl, DeVuyst, Jansen, London, Jelinek, Birkholz, Horton, Voorhees, Middleton, LeTarte, Gernaat, Llewellyn, Geiger and Perricone and referred to the Committee on Judiciary.

A bill to amend 1964 PA 170, entitled

"An act to make uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, officers, employees, and volunteers thereof, and members of certain boards, councils, and task forces when engaged in the exercise or discharge of a governmental function, for injuries to property and persons; to define and limit this liability; to define and limit the liability of the state when engaged in a proprietary function; to authorize the purchase of liability insurance to protect against loss arising out of this liability; to provide for defending certain claims made against public officers and paying damages sought or awarded against them; to provide for the legal defense of public officers and employees; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal certain acts and parts of acts,"

by amending the title and sections 1, 2, and 4 (MCL 691.1401, 691.1402, and 691.1404), the title and section 1 as amended by 1986 PA 175 and section 2 as amended by 1996 PA 150, and by adding sections 2a and 2b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to ~~make uniform~~ DEFINE AND LIMIT the liability of
3 municipal corporations, political subdivisions, and the state,
4 ~~its~~ THEIR agencies and departments, THEIR officers, employees,
5 and volunteers, ~~thereof,~~ and members of certain boards, coun-
6 cils, and task forces when engaged in the exercise or discharge
7 of a governmental function, for injuries to property and persons;
8 ~~to define and limit this liability;~~ to define and limit the
9 liability of the state when engaged in a proprietary function; to
10 authorize the purchase of liability insurance to protect against
11 loss arising out of this liability; to provide for defending cer-
12 tain claims made against public officers and paying damages
13 sought or awarded against them; to provide for the legal defense
14 of public officers and employees; to provide for reimbursement of
15 public officers and employees for certain legal expenses; and to
16 repeal ~~certain~~ acts and parts of acts.

17 Sec. 1. As used in this act:

18 (A) "CONSUMER PRICE INDEX" MEANS THE MOST COMPREHENSIVE
19 INDEX OF CONSUMER PRICES AVAILABLE FOR THIS STATE FROM THE BUREAU
20 OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR.

21 (B) "GOVERNMENTAL AGENCY" MEANS THE STATE, A POLITICAL SUB-
22 DIVISION, OR A MUNICIPAL CORPORATION.

23 (C) "GOVERNMENTAL FUNCTION" IS AN ACTIVITY THAT IS EXPRESSLY
24 OR IMPLIEDLY MANDATED OR AUTHORIZED BY CONSTITUTION, STATUTE,
25 LOCAL CHARTER OR ORDINANCE, OR OTHER LAW.

1 (D) "HIGHWAY" MEANS A PUBLIC HIGHWAY, ROAD, OR STREET THAT
2 IS OPEN FOR PUBLIC TRAVEL. SUBJECT TO SUBDIVISION (E), HIGHWAY
3 INCLUDES BRIDGES, SIDEWALKS, CROSSWALKS, AND CULVERTS ON THE
4 HIGHWAY. HIGHWAY DOES NOT INCLUDE ALLEYS, PARKING LOTS, ROADSIDE
5 REST AREAS, TREES, OR UTILITY POLES.

6 (E) "IMPROVED PORTION OF THE HIGHWAY DESIGNED FOR VEHICULAR
7 TRAVEL" MEANS THE PHYSICAL STRUCTURE OF THE TRAVELED PORTION,
8 PAVED OR UNPAVED, OF THE ROADBED ACTUALLY DESIGNED FOR PUBLIC
9 VEHICULAR TRAVEL. BY WAY OF ILLUSTRATION AND NOT LIMITATION,
10 IMPROVED PORTION OF THE HIGHWAY DESIGNED FOR VEHICULAR TRAVEL
11 DOES NOT INCLUDE SHOULDERS, CURBS, VEGETATION, TREES, UTILITY
12 POLES, MEDIANS, SIDEWALKS, CROSSWALKS, CULVERTS, GUARDRAILS, BAR-
13 RIERS, TRAFFIC CONTROL DEVICES, SIGNS, LIGHTING, OR OTHER INSTAL-
14 LATION OR CONDITION LOCATED OUTSIDE OF THE IMPROVED PORTION OF
15 THE HIGHWAY DESIGNED FOR VEHICULAR TRAVEL.

16 (F) "JURISDICTION" MEANS INCLUSION OF A HIGHWAY IN A GOVERN-
17 MENTAL AGENCY SYSTEM UNDER SECTIONS 1 TO 9 OF 1951 PA 51, MCL
18 247.651 TO 247.659.

19 (G) ~~(a)~~ "Municipal corporation" means ~~any~~ A city, vil-
20 lage, township, or charter township, or ~~any~~ A combination
21 ~~thereof~~ OF ANY OF THESE, when acting jointly.

22 (H) ~~(b)~~ "Political subdivision" means ~~any~~ A municipal
23 corporation, county, county road commission, ~~township, charter~~
24 ~~township,~~ school district, community college district, port dis-
25 trict, ~~or~~ metropolitan district, OR transportation authority,
26 or ~~any~~ A combination ~~thereof~~ OF ANY OF THESE, when acting
27 jointly; ~~, and any~~ A district or authority authorized by law or

1 formed by 1 or more political subdivisions; ~~, and any~~ OR AN
2 agency, department, court, board, or council of a political
3 subdivision.

4 (I) ~~(c)~~ "State" means the state of Michigan and its agen-
5 cies, departments, commissions, courts, boards, councils, AND
6 statutorily created task forces. ~~, and shall include every~~
7 STATE INCLUDES A public university ~~and~~ OR college of the state,
8 whether established as a constitutional corporation or
9 otherwise.

10 ~~(d) "Governmental agency" means the state, political subdi-~~
11 ~~visions, and municipal corporations.~~

12 ~~(e) "Highway" means every public highway, road, and street~~
13 ~~which is open for public travel and shall include bridges, side-~~
14 ~~walks, crosswalks, and culverts on any highway. The term highway~~
15 ~~does not include alleys, trees, and utility poles.~~

16 ~~(f) "Governmental function" is an activity which is~~
17 ~~expressly or impliedly mandated or authorized by constitution,~~
18 ~~statute, local charter or ordinance, or other law.~~

19 (J) ~~(g)~~ "Volunteer" means an individual who is specifi-
20 cally designated as ~~such~~ A VOLUNTEER and who is acting solely
21 on behalf of a governmental agency.

22 (K) "VERDICT" MEANS THE TOTAL OF ALL OF THE FOLLOWING:

23 (i) DAMAGES.

24 (ii) INTEREST.

25 (iii) FEES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY AND
26 EXPERT FEES.

1 (iv) COSTS.

2 (v) AN UNCOLLECTIBLE AMOUNT REALLOCATED UNDER SECTION 6304
3 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.6304.

4 Sec. 2. (1) ~~Each~~ SUBJECT TO SUBSECTIONS (3) AND (7), EACH
5 governmental agency having jurisdiction over a highway shall
6 maintain the highway in reasonable repair so that it is reason-
7 ably safe and convenient for public travel. A person sustaining
8 bodily injury or damage to his or her property by reason of fail-
9 ure of a governmental agency to keep a highway under its juris-
10 diction in reasonable repair, and in condition reasonably safe
11 and fit for travel, may recover the damages suffered by him or
12 her from the governmental agency. A PERSON SHALL NOT MAINTAIN A
13 SEPARATE ACTION UNDER THIS SECTION AGAINST AN EMPLOYEE, AGENT, OR
14 VOLUNTEER OF A GOVERNMENTAL AGENCY.

15 (2) The liability, procedure, and remedy as to county roads
16 under the jurisdiction of a county road commission shall be as
17 provided in section 21 of chapter IV of ~~Act No. 283 of the~~
18 ~~Public Acts of 1909, as amended, being section 224.21 of the~~
19 ~~Michigan Compiled Laws~~ 1909 PA 283, MCL 224.21.

20 (3) The duty of the state and the county road commissions to
21 repair and maintain highways, and the liability for that duty,
22 extends only to the improved portion of the highway designed for
23 vehicular travel and ~~does not include sidewalks, crosswalks, or~~
24 ~~any other installation outside of the improved portion of the~~
25 ~~highway designed for~~ REQUIRES ONLY THAT IT BE REASONABLY SAFE
26 AND FIT FOR PUBLIC vehicular travel.

1 (4) A judgment against the state based on a claim arising
2 under this section from acts or omissions of the state
3 transportation department is payable only from restricted funds
4 appropriated to the state transportation department or funds pro-
5 vided by its insurer.

6 (5) ~~-(2)-~~ If the state transportation department contracts
7 with another governmental agency to perform work on a state
8 trunkline highway, an action brought under this section for tort
9 liability arising out of the performance of that work shall be
10 brought only against the state transportation department under
11 the same circumstances and to the same extent as if the work had
12 been performed by employees of the state transportation
13 department. The state transportation department has the same
14 defenses to the action as it would have had if the work had been
15 performed by its own employees. If an action described in this
16 subsection could have been maintained against the state transpor-
17 tation department, it shall not be maintained against the govern-
18 mental agency that performed the work for the state transporta-
19 tion department. The governmental agency also has the same
20 defenses that could have been asserted by the state transporta-
21 tion department had the action been brought against the state
22 transportation department.

23 (6) ~~-(3)-~~ The contractual undertaking of a governmental
24 agency to maintain a state trunkline highway confers contractual
25 rights only on the state transportation department and does not
26 confer third party beneficiary or other contractual rights in any
27 other person to recover damages to person or property from that

1 governmental agency. This subsection does not relieve the state
2 transportation department of liability it may have, under this
3 section, regarding that highway.

4 (7) ~~(4)~~ The duty imposed by this section on a governmental
5 agency is limited by the provisions of section 81131 of part 811
6 (off-road recreation vehicles) and section 82124 of part 821
7 (snowmobiles) of the natural resources and environmental protec-
8 tion act, ~~Act No. 451 of the Public Acts of 1994, being sections~~
9 ~~324.81131 and 324.82124 of the Michigan Compiled Laws~~ 1994 PA
10 451, MCL 324.81131 AND 324.82124.

11 (8) ONLY THE GOVERNMENTAL AGENCY THAT HAD JURISDICTION OVER
12 THE HIGHWAY AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE
13 INJURY IS LIABLE IN AN ACTION UNDER THIS SECTION.

14 SEC. 2A. (1) IN AN ACTION UNDER SECTION 2 AND SUBJECT TO
15 SUBSECTION (4), THE VERDICT AMOUNT RECOVERABLE FROM ALL GOVERN-
16 MENTAL AGENCIES SHALL NOT EXCEED THE LOWEST OF THE FOLLOWING THAT
17 IS APPROPRIATE UNDER THE FACTS OF THAT ACTION:

18 (A) NOT MORE THAN \$300,000.00 FOR ALL CLAIMS BY AN INDIVID-
19 UAL OR THE INDIVIDUAL'S ESTATE FOR BODILY INJURY OR FOR DAMAGE TO
20 THE INDIVIDUAL'S PROPERTY AND ANY OTHER CLAIMS BY OTHER PERSONS
21 ARISING OUT OF THE SAME INJURY OR DAMAGE.

22 (B) NOT MORE THAN \$200,000.00 FOR ALL CLAIMS BY AN INDIVID-
23 UAL OR THE INDIVIDUAL'S ESTATE FOR BODILY INJURY OR FOR DAMAGE TO
24 THE INDIVIDUAL'S PROPERTY AND ANY OTHER CLAIMS BY OTHER PERSONS
25 ARISING OUT OF THE SAME INJURY OR DAMAGE, IF THE INDIVIDUAL UPON
26 WHOSE INJURY OR DAMAGE THE CLAIMS ARE BASED WAS ALL OF THE

1 FOLLOWING AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE
2 INJURY OR DAMAGE:

3 (i) SIXTEEN YEARS OF AGE OR OLDER.

4 (ii) THE DRIVER OR A PASSENGER IN THE FRONT SEAT OF THE
5 VEHICLE.

6 (iii) NOT WEARING A SAFETY BELT. THE LIMITATION PRESCRIBED
7 BY THIS SUBPARAGRAPH APPLIES REGARDLESS OF WHETHER THE FAILURE TO
8 WEAR A SAFETY BELT WAS A PROXIMATE CAUSE OF THE INJURY.

9 (C) NOT MORE THAN \$100,000.00 FOR ALL CLAIMS BY AN INDIVID-
10 UAL OR THE INDIVIDUAL'S ESTATE FOR BODILY INJURY OR FOR DAMAGE TO
11 THE INDIVIDUAL'S PROPERTY AND ANY OTHER CLAIMS BY OTHER PERSONS
12 ARISING OUT OF THE SAME INJURY OR DAMAGE, IF THE DRIVER OF THE
13 VEHICLE AT THE TIME OF THE OCCURRENCE IS UNDER THE INFLUENCE OF
14 INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE, OR A COMBINATION
15 OF INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE, IS IMPAIRED,
16 OR HAS A BLOOD ALCOHOL CONTENT OF 0.07% OR MORE BY WEIGHT OF
17 ALCOHOL. THE LIMITATION PRESCRIBED BY THIS SUBDIVISION APPLIES
18 REGARDLESS OF WHETHER THE DRIVER'S CONDITION WAS A PROXIMATE
19 CAUSE OF THE INJURY.

20 (2) IN AN ACTION UNDER SECTION 2, A LIMITATION PRESCRIBED BY
21 THIS SECTION APPLIES TO THE AGGREGATED AMOUNT OF CLAIMS BY AN
22 INDIVIDUAL OR THE INDIVIDUAL'S ESTATE FOR BODILY INJURY OR FOR
23 DAMAGE TO THE INDIVIDUAL'S PROPERTY AND CLAIMS BY OTHER PERSONS
24 ARISING OUT OF THE SAME INJURY OR DAMAGE. A LIMITATION DOES NOT
25 APPLY SEPARATELY TO EACH PERSON CLAIMING DAMAGES.

26 (3) THE COURT OR COUNSEL FOR A PARTY IN AN ACTION UNDER
27 SECTION 2 SHALL NOT ADVISE THE JURY OF THE LIMITATIONS PRESCRIBED

1 BY THIS SECTION. SUBJECT TO SECTION 2B, IF A LIMITATION
2 PRESCRIBED BY THIS SECTION APPLIES, THE COURT SHALL SET ASIDE THE
3 AMOUNT OF THE VERDICT THAT IS IN EXCESS OF THE LIMITATION.

4 (4) THE LIMITATIONS PRESCRIBED BY THIS SECTION SHALL BE
5 ADJUSTED AT THE END OF EACH CALENDAR YEAR BY AN AMOUNT THAT
6 REFLECTS THE CUMULATIVE ANNUAL PERCENTAGE CHANGE IN THE CONSUMER
7 PRICE INDEX.

8 SEC. 2B. BEFORE THE COURT APPLIES A LIMITATION PRESCRIBED
9 BY SECTION 2A TO A VERDICT, THE TRIER OF FACT SHALL CONSIDER THE
10 PLAINTIFF'S NEGLIGENCE AT THE TIME OF THE OCCURRENCE THAT
11 RESULTED IN THE INJURY AND SHALL REDUCE THE PLAINTIFF'S VERDICT
12 IN PROPORTION TO THE AMOUNT THAT THE PLAINTIFF'S NEGLIGENCE WAS A
13 PROXIMATE CAUSE OF THE INJURY. UNDER THIS SECTION, A PLAINTIFF'S
14 NEGLIGENCE INCLUDES, BUT IS NOT LIMITED TO, A FINDING THAT 1 OR
15 BOTH OF THE FOLLOWING WERE TRUE AT THE TIME OF THE OCCURRENCE
16 THAT RESULTED IN THE INJURY:

17 (A) THE PLAINTIFF WAS NOT WEARING A SAFETY BELT.

18 (B) THE PLAINTIFF OR, IF THE PLAINTIFF WAS A PASSENGER IN A
19 VEHICLE, THE DRIVER OF THE VEHICLE WAS UNDER THE INFLUENCE OF
20 INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE, OR A COMBINATION
21 OF INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE, WAS IMPAIRED,
22 OR HAD A BLOOD ALCOHOL CONTENT OF 0.07% OR MORE BY WEIGHT OF
23 ALCOHOL.

24 Sec. 4. (1) ~~As a condition to any recovery~~ EXCEPT AS PRO-
25 VIDED IN SUBSECTION (3), AN INJURED PERSON SHALL NOT RECOVER for
26 injuries sustained by reason of ~~any~~ A defective highway ~~, the~~
27 ~~injured person~~ UNLESS, within ~~120~~ 180 days ~~from~~ AFTER the

1 time the injury ~~occurred, except as otherwise provided in~~
2 ~~subsection (3) shall serve~~ OCCURS, THE INJURED PERSON SERVES a
3 notice on the governmental agency of the occurrence of the injury
4 and the defect. The notice shall specify the exact location and
5 nature of the defect, the injury sustained, and the names of the
6 witnesses known at the time by the claimant.

7 (2) ~~The~~ OTHER THAN NOTICE TO THE STATE, THE notice
8 REQUIRED UNDER SUBSECTION (1) may be served ~~upon any~~
9 ~~individual,~~ either personally ~~,~~ or by certified mail, return
10 receipt requested, UPON ANY INDIVIDUAL who may lawfully be served
11 with civil process directed against the governmental agency, any-
12 thing to the contrary in the charter of ~~any~~ A municipal corpo-
13 ration notwithstanding. ~~In case of the state, such notice~~
14 NOTICE TO THE STATE REQUIRED UNDER SUBSECTION (1) shall be filed
15 in triplicate with the clerk of the court of claims. Filing of
16 ~~such~~ THE notice ~~shall constitute~~ CONSTITUTES compliance with
17 section 6431 of ~~Act No. 236 of the Public Acts of 1961, being~~
18 ~~section 600.6431 of the Compiled Laws of 1948~~ THE REVISED JUDI-
19 CATURE ACT OF 1961, 1961 PA 236, MCL 600.6431, requiring the
20 filing of notice of intention to file a claim against the state.
21 If required by the legislative body or chief administrative offi-
22 cer of the responsible governmental agency, the claimant shall
23 appear to testify, if he OR SHE is physically able to do so. ~~,~~
24 ~~and~~ THE CLAIMANT shall produce ~~his~~ witnesses before the legis-
25 lative body, a committee ~~thereof~~ OF THAT BODY, ~~or~~ the chief
26 administrative officer ~~,~~ or ~~his~~ THAT OFFICER'S deputy, or a
27 legal officer of the governmental agency as directed by the

1 legislative body or chief administrative officer of the
2 responsible governmental agency, for examination under oath as to
3 the claim, the amount ~~thereof~~ OF THE CLAIM, and the extent of
4 the injury.

5 (3) ~~If the injured person is under the age of 18 years at~~
6 ~~the time the injury occurred, he shall serve the notice required~~
7 ~~by subsection (1) not more than 180 days from the time the injury~~
8 ~~occurred, which notice may be filed by a parent, attorney, next~~
9 ~~friend or legally appointed guardian.~~ If the injured person is
10 physically or mentally incapable of giving notice, ~~he~~ THE
11 PERSON shall serve the notice required by subsection (1) not more
12 than 180 days after the termination of the disability. In ~~all~~
13 A civil ~~actions~~ ACTION in which the physical or mental capabil-
14 ity of the person is in dispute, that issue shall be determined
15 by the trier of the facts. ~~The provisions of this~~ THIS subsec-
16 tion ~~shall apply~~ APPLIES to all charter provisions, statutes,
17 and ordinances ~~which~~ THAT require written ~~notices~~ NOTICE to
18 ~~counties~~ A COUNTY or municipal ~~corporations~~ CORPORATION.

19 (4) A NOTIFICATION TIME LIMIT PRESCRIBED BY THIS SECTION IS
20 AN ABSOLUTE BAR TO RECOVERY REGARDLESS OF WHETHER THE GOVERNMEN-
21 TAL AGENCY IS PREJUDICED BY THE FAILURE OF TIMELY NOTIFICATION.